

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ
_____ /

MOTION TO SUBMIT SUPPLEMENTAL AUTHORITY

Defendant, Hatem Naji Fariz, by and through undersigned counsel, hereby respectfully requests that this Honorable Court allow the submission of supplemental authority for the Court's consideration during oral argument of Mr. Fariz's pending Motion to Dismiss Counts 3, 4, 12-16, and 18-43, and to Quash Paragraph 26(f) of Count One of the Superseding Indictment (Doc. 718). As grounds in support, Mr. Fariz states:

1. This Court has scheduled oral argument on December 3, 2004, concerning certain of Mr. Fariz's motions challenging the charges in the Superseding Indictment.
2. Mr. Fariz respectfully submits the following supplemental authority in advance of oral argument to provide notice to the Court and to the parties of case law that counsel for Mr. Fariz may discuss during argument:

Scienter Argument:

United States v. Carll, 105 U.S. 611, 612-13 (1881)¹ (holding that indictment

¹ This decision is cited by the Ninth Circuit in *United States v. X-Citement Video*, 77 F.3d 491 (9th Cir. 1996) (unpublished decision, available at 1996 WL 5314), cited by the government. (Doc. 773 at 7-8).

that tracked the language of statute prohibiting passing counterfeit obligations of the United States with the intent to defraud, without including the common-law requirement that the defendant *knew* that the instrument was counterfeit, was not sufficient, stating “the fact that the statute in question, read in the light of the common law, and of other statutes on the like matter, enables to court to infer the intent of the legislature, does not dispense with the necessity of alleging in the indictment all the facts necessary to bring the case within that intent”).

Due Process Argument:

McKinney v. Alabama, 424 U.S. 669, 675-76 (1976) (vacating conviction for selling material that was judicially declared obscene, finding that the defendant “was convicted and sentenced in a criminal proceeding wherein the issue of obscenity *vel non* was held to be concluded against him by the decree in a civil proceeding to which he was not a party and of which he had no notice,” and concluding that “this procedure fails to meet the standards required where First Amendment interests are at stake”; reasoning further that even though the prior proceedings declaring the material obscene had included the publishers of the magazines, “it does not follow that a decision reached in such proceedings should conclusively determine the First Amendment rights of others.”).

WHEREFORE, Defendant, Hatem Naji Fariz, respectfully requests that this Honorable Court allow the submission of the foregoing supplemental authority for the Court's consideration of Mr. Fariz's pending Motion to Dismiss Counts 3, 4, 12-16, and 18-43, and to Quash Paragraph 26(f) of Count One of the Superseding Indictment (Doc. 718).

Respectfully submitted,

R. FLETCHER PEACOCK
FEDERAL PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December, 2004, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Assistant Federal Public Defender